

Spain: Leaked draft transparency law below Council of Europe minimum standard

Madrid, 22 September 2010 – Spain’s draft access to information law applies to such a limited amount of information that it will be impossible for Spain to ratify the Council of Europe Convention on Access to Official Documents according to Access Info Europe’s analysis of a leaked copy of the draft.

In spite of some well-drafted positive features, the law contains a series of fatal flaws:

- **Narrow definition of information:** The biggest problem by far is the very narrow definition of information, which excludes much information necessary for public participation in decision making and for holding the government accountable (See Box below);
- **Scope:** The law is limited to the administrative branch. It excludes the legislative and judicial powers for their non-administrative information and seems to give some leeway for even administrative information where access is governed by other laws. A number of bodies including the Constitutional Court, Court of Accounts, the General Council of the Judicial Power, and the
- **Long time frames:** 30 days against the European average of 15 days for receiving answers (with extensions of another 30 days possible). On the other hand, requesters only have 10 days to launch appeals against administrative silence.
- **Right of appeal is limited:** Requestors cannot make an appeal to a body which refuses to release information, even though this is required by Council of Europe Convention on Access to Official Documents. This system will put a disproportionate burden for processing appeals on the Spanish Agency for Data Protection and Access to Information – and the law says that administrative silence from this agency after two months is considered negative, which would be a very unsatisfactory outcome for requesters and make appeals to the courts more complicated.
- **No fundamental right:** the law does not establish a fundamental right even though it recognises that the Treaty of Lisbon establishes a right at the EU level; the law does not make reference to the jurisprudence of the European Court of Human Rights recognising the right of access to information.

In access info’s analysis these flaws – particularly the very limited scope of information to which the future law will apply, and some other technical problems such as not requiring all bodies which hold information to process requests, mean that Spain cannot sign the Council of Europe Convention on Access to Official Documents.

“Spain is failing to break with a long tradition of bureaucratic secrecy with this draft law which excludes large volumes of information,” commented Helen Darbishire, Executive Director of Access Info Europe.

Box A: The limited access to information under the future law

Under the future law it will not be possible to obtain:

- All public statistics
- All “merely ancillary” information used to “support the exercise of public activities” such as “notes, drafts, opinions, summaries, reports and internal communications” – in other words, much of the information that is of interest in the process of public participation
- All documents which are currently state secrets
- Information held in historical archives
- Any other materials which have a specific regime of access to information.
- Information destined for commercial reuse
- A number of registers including the property register and companies register – two essential sources of information needed for the fight against corruption.

Positive features of the draft law include:

- All persons may request information and never have to justify why they want it.
- The request process may be made by any form, including electronic, and requestors can specify the format in which they prefer to receive the information.
- Exceptions to access are limited, fit with international standards, and are subject to a harm test and a balance test of overriding public interest in releasing the information.
- The application of exceptions should result in partial release of the remaining information.
- Personal information which does not harm the private life of individuals and which relates to the organisation, functioning and activities of public bodies should be released upon request.
- Requests are free as is viewing copies in situ. Otherwise costs are limited to costs of reproduction or copying to other formats.
- Public bodies should inform the public about their right of access and public officials should help requestors with their requests, coming back to them to clarify unclear requests.
- Proactive publication of information is limited but includes core information about the functioning of public bodies, their structures, services, budgets, and spending, as well as some economical and statistical information which should be regularly updated.
- The oversight of the law will be by the renamed Spanish Agency for Data Protection and Access to Information, which will have the power to order disclosure of information as well as to take a series of complementary measures to promote the compliance with access to information by the public administration.

For more information, please contact:

Helen Darbishire / Victoria Anderica

Access Info Europe (www.access-info.org)

victoria@access-info.org

+34 91 365 2634

+34 667 685 319